



INTERIOR BOARD OF INDIAN APPEALS

Estate of Cecile Brockey Tailfeathers

25 IBIA 269 (04/18/1994)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF CECILE BROCKEY
TAILFEATHERS

: Order Affirming Decision
:
: Docket No. IBIA 94-84
:
: April 18, 1994

This is an appeal from an order denying petition for modification issued by Administrative Law Judge Keith L. Burrowes on February 4, 1994. The appeal is docketed under the docket number shown above. For the reasons discussed below, the Board summarily affirms Judge Burrowes' order.

An order approving the will of Cecile Brockey Tailfeathers (decendent) was issued on March 19, 1976, by Administrative Law Judge Frances C. Elge. Irene Tailfeathers Michell, decendent's daughter, was residuary devisee under the will. Michael Alvin Michell, appellant here, was devised a 1/3 interest in a portion of Blackfeet Allotment 800.

On February 3, 1994, appellant filed a document titled "Petition for Modification Order," contending that a per capita payment to which decendent was entitled under a Blackfeet judgment fund distribution should be included in the estate inventory.

In his order denying appellant's petition, Judge Burrowes stated, inter alia:

[T]he original order, issued on March 19, 1976, approved the will of this decendent, and correctly identified Irene Tailfeathers Michell as the residuary devisee, and stated that she was to receive "any other trust property, not specifically devised, which may have been owned by the testatrix."

I find and conclude that what this "petition" asks for was taken care of in the original order.

On appeal to the Board, appellant contends that the per capita payment could not have been included in decendent's estate in 1976 because the funds were not distributed until 1982. 1/

1/ Appellant does not explain why he waited 12 years after the judgment fund distribution to pursue this matter.

The Bureau of Indian Affairs' regulations governing distribution of judgment funds establish a mechanism for payment of the per capita shares of deceased beneficiaries. 25 CFR 87.10(d) provides: "The shares of deceased individual beneficiaries, plus all interest and investment income accruing thereto, shall be paid to their heirs and legatees upon their determination as provided in 43 CFR part 4, subpart D." When an estate has already been probated, this regulation does not require that the estate inventory be modified to include the per capita share but allows BIA to distribute the share in accordance with a determination of heirs or legatees made in the Departmental probate proceeding.

Even if it were appropriate to entertain a petition to modify the estate inventory in this case, appellant is not a proper person to file such a petition. Any per capita payment which might have accrued to decedent's estate would pass, in its entirety, to Irene Tailfeathers Michell, the residuary devisee under decedent's will. Appellant would not be entitled to receive any portion of such a payment. Therefore, he lacks standing to file a petition for this purpose.

It is clear that there is no set of circumstances under which appellant can prevail in this appeal. Accordingly, the Board finds that briefing is not necessary and that a decision may be issued at this time. See, e.g., Estate of Elmer James Whipple, 16 IBIA 225 (1988); Estate of Richard Lip, 15 IBIA 97 (1987).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Burrowes' February 4, 1994, order is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge